

KATE E SLACK

Year of call – 2015

DIRECT CONTACT DETAILS:

Phone: 07 3221 2182
Mobile: 0439 785 565
Email: kslack@qldbar.asn.au

PERSONAL ASSISTANT DETAILS:

Kristen Edwards
Phone: 07 3221 2182
Email: k.edwards@higginschambers.com.au

AREAS OF PRACTICE

Administrative and Public Law
Appellate Law
Constitutional Law
Regulatory Law
Statutory Entitlements Law

EDUCATION

Bachelor of Laws (Hons), Griffith University
Bachelor of Arts in Politics and Government (Hons), Griffith University
Graduate Diploma in Legal Practice, Skills and Ethics, Griffith University

CAREER HISTORY

Kate Slack practises as a barrister at the private Bar. Kate has a predominantly public law and regulatory law practice.

Kate regularly appears, both led and unled, in federal and state jurisdictions at trial and appellate level. Her particular expertise is in complex judicial review proceedings (see *Byron Aged Care v Aged Care Quality and Safety Commissioner* [2022] FCA 1060 (unled against Silk) and *McCullagh v Northern Midlands Council, Knowles and*

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Level 29, 239 George Street
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Jennings [2024] TASSC 66 (led by Chris Gunson SC), appeals from the Federal Court to the Full Federal Court (see *Kitchen v Director of Professional Services Review* [2023] FCAFC 160 (unled against Silk) and, appeals from the Administrative Review Tribunal (previously the Administrative Appeals Tribunal) to the Federal Court (see *John Holland Pty Ltd v Bartlett* [2023] FCA 1030 (unled against Silk) and *Woodhouse v Comcare* [2021] FCAFC 95 (led by Andrew Berger KC)).

Kate appeared for the plaintiffs in the two most recent High Court cases on the operation and application of the power in s 51(xix) of the Constitution: *Love v Commonwealth of Australia* (2020) 270 CLR 152 (led by Stephen Keim SC) and, *Chetcuti v Commonwealth of Australia* (2021) 272 CLR 609 (led by Georgina Schoff KC and Georgina Costello KC). Kate has appeared in other significant High Court proceedings including *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Moorcroft* (2021) 273 CLR 21 (led by Stephen Keim SC) and *Willmot v State of Queensland* [2024] HCA 42 (led by Cate Heyworth-Smith KC).

Kate is also often briefed to appear in urgent interlocutory applications including, for example, for the Queensland Electoral Commission on the day of the Queensland State Election in October 2024. In June 2022, Kate was appointed Chair of the Public Records Review Committee of the Queensland State Archives. Prior to being appointed Chair, Kate was a member of the Committee for six years.

In October 2022, Kate was elected to the Executive of the Federal Litigation and Dispute Resolution Section of the Law Council of Australia. Kate also currently serves as the Editor of the Law Council of Australia's publication, Chapter III.

Kate presently serves on the Bar Council of the Queensland Bar Association (and previously served on Bar Council from December 2017 to December 2018).

Before being called to the Bar in June 2015, Kate was a Senior Solicitor in the government team of a national firm.

SELECTED SIGNIFICANT CASES

***Love v Commonwealth of Australia* [2020] HCA 3; (2020) 270 CLR 152** (led by Stephen Keim SC)

Kate appeared as junior counsel for Mr Love and Mr Thoms in the High Court's original jurisdiction. The Full Court of the High Court, by a majority of four Justices, agreed that persons who satisfy the tripartite test in *Mabo v Queensland (No 2)* (1992) 175 CLR 1, 70 are not 'aliens' as that word is used in s 51(xix) of the *Constitution*. The case is significant as it recognises the sui generis position of First Nations Australians and identifies a category of constitutional 'non-aliens' (the only category currently recognised in Australian law).

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2020/3.html>

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***Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Moorcroft* [2021] HCA 19; (2021) 273 CLR 21** (led by Stephen Keim SC)

Kate appeared as junior counsel for Ms Moorcroft responding to the Minister's appeal to the High Court. This case concerned whether the phrase "removed...from Australia" in subparagraph (d) of the definition of "behaviour concern non-citizen" in s 5(1) of the *Migration Act 1958* (Cth) refers to removal *in fact* or to *lawful* or *valid* removal in accordance with Division 8 of Part 2 of the *Migration Act 1958* (Cth).

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2021/19.html>

***Chetcuti v Commonwealth of Australia* [2021] HCA 25; (2021) 272 CLR 609** (led by Georgina Schoff KC and Georgina Costello KC)

Kate appeared as junior counsel for Mr Chetcuti in his appeal to the Full Court of the High Court. A majority of 6 Justices found that Mr Chetcuti, born a British subject who arrived in Australia prior to the commencement of the *Nationality and Citizenship Act 1948* (Cth), was an 'alien' for the purposes of s 51(xix) of the *Constitution*. This case is significant because it clarified that British subjects who arrived in Australia prior to Australian citizenship being introduced as a statutory concept were non-aliens when they arrived and, whether that status could be maintained despite not taking up Australian citizenship.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2021/25.html>

***Willmot v State of Queensland* [2024] HCA 42** (led by C Heyworth-Smith KC and with D Schneidewin)

Kate appeared as junior counsel for the State of Queensland in Ms Willmot's appeal from orders made by the Queensland Court of Appeal dismissing Ms Willmot's appeal from a decision of Bowskill CJ to permanently stay Ms Willmot's claim for damages against the State for negligence. Ms Willmot alleged that the State failed to properly monitor and supervisor her and those into whose care she was placed while she was a State Child as defined in the *State Children Act 1911* (Qld). The claim was permanently stayed by the trial judge because the consequences of the passage of time since the alleged events occurred meant that a fair trial was not possible. As a consequence of the change in the law recognised by the High Court in *GLJ v Trustees of the Roman Catholic Church for the Diocese of Lismore* [2023] HCA 32; (2023) 97 ALJR 857, the High Court allowed Ms Willmot's appeal.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2024/42.html>

***King & Ors v Australian Securities and Investments Commission (No 1)* (2019) 134 ACSR 105; (2019) QCA 121** (led by Patrick O'Shea KC, Jonathon Moore KC and Matthew Brady KC)

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Kate acted as junior counsel for ASIC in the Queensland Court of Appeal in a two-week appeal brought by four officers of a substantial corporate investment vehicle who were found to have engaged in a large number of breaches of the *Corporations Act 2001* (Cth).

Link to case: <https://www.sclqld.org.au/caselaw/QCA/2019/121>

***Asic v Comcare* [2020] FCAFC 105**

Kate acted as counsel for Comcare in the Full Court of the Federal Court in an appeal which concerned the complicated transitional provisions in the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2020/105.html>

***Woodhouse v Comcare* [2021] FCAFC 95** (led by Andrew Berger KC)

Kate appeared as junior counsel for Comcare before the Full Court. The case was concerned with the interpretation of the defined terms 'injury' and 'disease' in ss 5A and 5B of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**). Specifically, the Court was asked to consider whether an employee that no longer suffers from a 'disease', as that term is defined in s 5B, is still entitled to compensation under ss 16 (medical expenses) and 19 (incapacity for work).

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2021/95.html>

***Leach v Comcare* [2021] FCAFC 134** (led by Andrew Berger KC)

Kate acted as junior counsel for Comcare in the Full Court of the Federal Court in an appeal which concerned the notice provisions of the *Safety, Rehabilitation and Compensation Act 1988* (Cth). This case was a rare opportunity for s 53 of the SRC Act to benefit from judicial consideration in the context of assessing whether permissible fact-finding occurred in the Administrative Appeals Tribunal.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2021/134.html>

***Kitchen v Director of Professional Services Review* [2023] FCAFC 160** (unled against Silk)

Kate acted as counsel for the Director of Professional Services Review in the Full Court responding to an application for leave to appeal a costs order. The application for leave to appeal was dismissed.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2023/160.html>

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Byron Aged Care Limited v Aged Care Quality and Safety Commissioner [2022] FCA 1060 (unled against Silk)

Kate acted for the Aged Care Quality and Safety Commissioner (the **Commissioner**) in the Federal Court in a judicial review application brought by Byron Aged Care Limited. The case concerned the ability of the Commissioner to issue directions under s 19 of the *Aged Care Quality and Safety Commission Rules 2018* (Cth) in the context of whether a special nurse and security guard for an aged care resident constituted “care” under the *Quality of Care Principles 2014* (Cth). The case is significant for its consideration of principles governing the grant of declaratory relief and prohibition and where the Court is invited to give an advisory opinion.

Norouzi v The Director of the Professional Services Review Agency [2020] FCA 1524

Kate acted for the Director of the Professional Services Review Agency in the Federal Court in a judicial review application of two separate decisions (the first by the Committee responsible for determining whether Mr Norouzi had engaged in inappropriate practice; the second by the Determining Authority responsible for determining sanction). The case is significant for what his Honour Logan J found with respect to the application of the extension of time principles to the review of the Committee’s decision.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2020/1524.html>

John Holland Pty Ltd v Bartlett [2023] FCA 1030 (unled against Silk)

Kate acted for John Holland Pty Ltd in an appeal from a decision of the Administrative Appeals Tribunal concerning application of s 19 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**) and the interpretation of s 54 of the SRC Act. The appeal was allowed.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/1030.html>

Jele Chemists Pty Ltd v Australian Community Pharmacy Authority [2023] FCA 1652 (unled against Silk)

Kate acted for the Australian Community Pharmacy Authority responding to an application for judicial review of a recommendation made to the Secretary of the Department for Health and Ages Care that approval be granted to the second respondent to supply pharmaceutical benefits from a particular premises. The application was dismissed.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/1652.html>

Soryal v Director of Professional Services [2023] FCA 326 (led by N Kidson KC)

Kate acted as junior counsel for the Director of Professional Services responding to an application for judicial review of a decision of the Director to refer Dr Soryal, a dentist, to a Professional Services Review Committee to

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investigate potential inappropriate conduct under Part VAA of the *Health Insurance Act 1973* (Cth). The application was dismissed.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/326.html>

***Fox Coal Pty Ltd & Anor v Minister for Resources* [2023] QSC 197** (led by J Horton KC)

Kate acted as junior counsel for the Minister of Resources responding to an application for judicial review of a decision by the Minister to reject an application made by the applicants for the grant of a mineral development licence under s 186(1)(b) of the *Mineral Resources Act 1989* (Qld).

Link to case: <https://www.queenslandjudgments.com.au/caselaw/qsc/2023/197>

***Moradi v Comcare* [2024] FCA 812** (led by Nitra Kidson KC)

Kate acted as junior counsel for Comcare responding to an appeal under s 44 of the *Administrative Appeals Tribunal Act 1975* concerning the meaning of the phrase 'administrative action' in the exception provided for in s 5A(2) of the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2024/812.html>

***McCullagh v Northern Midlands Council, Knowles and Jennings* [2024] TASSC 66** (led by Chris Gunson SC)

Kate acted as junior counsel for Mr McCullagh in novel proceedings commenced by him for an order to show cause why relief in the nature of certiorari, prohibition and mandamus and/or declarations and injunctions should not be granted in respect of the conduct of the Northern Midlands Council by agreeing to pay for, and paying, legal costs incurred in defamation proceedings against Mr McCullagh in the Court by the second and third respondents, the Mayor and CEO of the Northern Midlands Council.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASSC/2024/66.html>

General

Kate's expertise lies in complex judicial review proceedings. Kate is often briefed to provide strategy advice in contemplation of judicial review proceedings, draft Applications and appear at interlocutory and final hearings. Kate also commonly acts for respondents to judicial review proceedings.

Kate is routinely briefed to give advisory opinions as to whether special leave to appeal ought to be sought and to appear in such applications.

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Kate is also regularly briefed to seek, or resist, urgent interlocutory relief including, for example, for the Queensland Electoral Commission on the day of the Queensland State Election in October 2024.

Kate appears in Royal Commissions, Inquiries and Inquests. For example, Kate appeared for a witness in the Royal Commission into the Robodebt Scheme, was engaged to advise and prepare a witness in the Aged Care Royal Commission and, was briefed by the Commonwealth of Australia in the Inquest into the Death of Faysal Ishak Ahmed in the Coroners Court of Queensland.

Kate regularly appears in the Federal Court of Australia and since Kate was first called to the bar, has maintained a busy merits review practise in the Administrative Review Tribunal in a wide array of practise areas.

SERVICE

Council Member, Bar Association of Queensland (November 2024 to present)

Junior Mentor to Readers (Geogina Morgan and Felicity Nagorcka)

Executive Member of the Federal Dispute Resolution Section of the Law Council of Australia (October 2022 to present)

Editor of the Federal Dispute Resolution Section of the Law Council of Australia's publication, *Chapter III* (November 2022 to present)

Chair of the Queensland State Archives, Public Records Review Committee (June 2022 to present)

Member of the Federal Administrative Law Reform Working Group (with the primary purpose of advising the Law Council of Australia on matters related to the abolition and replacement of the Administrative Appeals Tribunal) (February 2023 to October 2024)

Committee Member of the Queensland Bar Association, Bar Care Committee (2017 to present)

Committee Member of the Queensland Bar Association, New Bar Committee (2017 to present)

Committee Member of the Law Council of Australia's, Commonwealth Law Conference Organising Committee (2022 to present)

Convenor and Mentor, Federal Magistrate Keith Slack OAM Memorial Prize, Family Law Mentorship Program (awarded annually to the best performing student in the unit LLB243 Family Law, QUT) (2018 to present)

Member of the Queensland State Archives, Public Records Review Committee (May 2016 to June 2022)

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Council Member, Bar Association of Queensland (2017)

PAPERS AND PRESENTATIONS

Kate regularly delivers papers and presentations to conferences and clients. For example, most recently:

- In July 2024, Kate delivered a national seminar series for the Law Council of Australia on the introduction of the Administrative Review Tribunal
- In April 2024, Kate delivered a presentation entitled 'Common Judicial Review Grounds' to the Bar Association of Queensland
- in July 2023, Kate delivered a presentation entitled 'Urgent Interlocutory Applications' to Sparke Helmore Lawyers national government team and clients (over 150 attendees).
- in September 2022, Kate delivered a presentation entitled 'They can't be serious! Tips and tricks on the assessment of AAT decisions for error and how to evaluate appeal prospects' to Sparke Helmore Lawyers national government team and clients (over 220 attendees).
- in March 2022, Kate delivered a presentation entitled 'Post-*Love v Commonwealth* (2020) CLR 152 Developments' at the Law Council of Australia Migration Law Conference.
- In February 2022, Kate delivered a presentation entitled 'Misfeasance in public office' to the Commonwealth Department of Health.
- in November 2021, Kate delivered a presentation entitled 'Interlocutory injunctions under the *Building Industry (Improving Productivity) Act 2016* (Cth) to the Australian Building and Construction Commission's national team of lawyers and investigators.
- in October 2021, Kate delivered a presentation entitled 'To *Snell* and back – re-litigation in the Administrative Appeals Tribunal to Sparke Helmore Lawyers national government team and clients.
- in July 2021, Kate delivered a presentation entitled 'The implications of *Woodhouse v Comcare* [2021] FCAFC 95 - I feel your *Prain*, to HWL Ebsworth and ACT government lawyers.
- in March 2020, Kate delivered a presentation entitled 'Reflections on the recent High Court Decision in *Love & Thoms*: indigenous rights and immigration law' at the Law Council of Australia Migration Law Conference.

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- in December 2019, Kate delivered a presentation entitled 'Arising out of, or in the course of employment: where does work end and life begin?' Law Council of Australia Comcare Hot Topics Seminar.

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